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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte OWENS-ILLINOIS CLOSURE INC.

Appeal 2010-006061
Application 10/799,114
Technology Center 3700

Before: RICHARD E. SCHAFER, JAMESON LEE, and SALLY G.
LANE, *Administrative Patent Judges.*

LEE, *Administrative Patent Judge.*

DECISION ON APPEAL

Owens-Illinois Closure Inc. (“Appellant”), the real party in interest, appeals from a final rejection of claims 1-12. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE PRIOR ART

The Examiner relies on the following references:

Curry	US 4,548,329	Oct. 22, 1985
Kamath	US 5,320,234	Jun. 14, 1994
Przytulla	US 5,915,579	Jun. 29, 1999
Ma	US 6,112,923	Sep. 5, 2000

THE REJECTIONS ON APPEAL

Claims 1-4 and 6 were finally rejected under 35 U.S.C. § 102(b) as anticipated by Kamath.

Claims 1, 3-5, and 7 were finally rejected under 35 U.S.C. § 102(b) as anticipated by Przytulla.

Claims 5 and 6 were finally rejected under 35 U.S.C. § 103(a) as obvious over Przytulla.

Claims 1, 3-5, and 7 were finally rejected under 35 U.S.C. § 102(b) as anticipated by Ma.

Claims 2 and 12 are newly rejected under 35 U.S.C. § 102(b) as anticipated by Ma.

Claims 8 and 9 were finally rejected under 35 U.S.C. § 103(a) as obvious over Ma.

Claims 10 and 11 were finally rejected under 35 U.S.C. § 103(a) as obvious over Ma and Curry.

THE INVENTION

Appellant discloses a tamper-resistant screw closure (*i.e.*, screw cap) that is more easily withdrawn from the mold used to form the closure. An example of the closure is shown in Figs. 5 and 8, reproduced below.

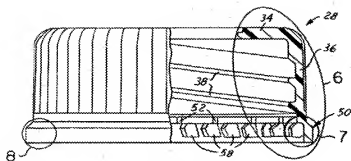


FIG. 5

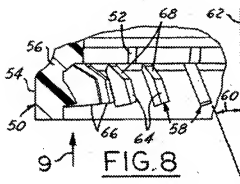


FIG. 8

Fig. 5 is a perspective view of the closure with a cutout showing wings 58 of a tamper-resistant band 50. (Spec. 4:2-3; 6:6-7). Fig. 8 is an expanded cutout view, showing the wings 58

underlying the left section 8 of the band 50 (as delineated in Fig. 5). (Spec. 4:6-7).

As shown by Fig. 8, the wings 58 are attached to the band 50 at a “counterclockwise” angle 60 explained

below. (Spec. 6:9-13). When the closure is unscrewed from its mold, the wings 58 are pulled leftward and upward with reference to Fig. 8. (8:16-9:10). Tilting the wings 58 counterclockwise allows them 58 to more easily slip out of the tight spacing between the molds’ wing-forming projections. (*Id.*).

The meaning of “counterclockwise” angle is indicated in the specification, as follows (Spec. 6:9-13):

Each wing 58 is flexibly and resiliently connected to the inner surface of band 54 along a line that is at a counterclockwise angle 60 (FIG. 8) with respect to the axis 62 of closure skirt 36, as viewed from inside of the skirt. This counterclockwise or “negative” tilt angle 60 facilitates removal of the closure from the injection mold core without substantial permanent deformation or distortion of wings 58[.]

ANALYSIS

I. § 102(b) Rejections

Claims 1-7 and 12 were rejected under 35 U.S.C. § 102(b). Claims 1 and 7 are the only independent claims. In three separate rejections, claims 1 and 7 were rejected as anticipated by Kamath, Przytulla, and Ma. We now address these rejections collectively.

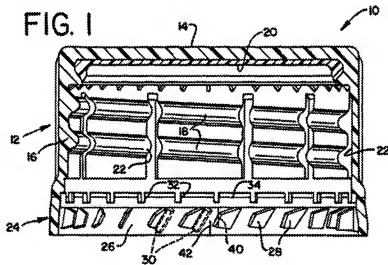
Using the same exact language emphasized above, claims 1 and 7 each require a tamper band with “counterclockwise” wings. Particularly, claims 1 and 7 each require a tamper band with “said wings being flexibly resiliently¹ connected to said inner surface of said band along lines that are disposed at a counterclockwise angle with respect to an axis of said skirt as viewed from inside said skirt.” Claims 2-20 respectively depend from claim 1 or claim 7 and, accordingly, incorporate this limitation.

The meaning of “counterclockwise” in light of the specification is clear. In the context of Fig. 8, the specification states that each wing 58 is disposed at a counterclockwise angle 60 with respect to the axis 62 of the closure skirt 36 “as viewed from inside of the skirt.” (Spec. 6:9-11). Thus, “counterclockwise” means that the wings tilt left of vertical when viewed from inside of the closure’s skirt and with respect to the closure’s orientation (*i.e.*, both the viewer and the closure are oriented right-side up). That is, if one could stand up inside of the closure and look out toward the skirt, he or she would view the wings 58 as leaning leftward.

¹ Claim 7 recites the wings as “resiliently flexibly” connected, not “flexibly resiliently” connected. We find this difference inconsequential.

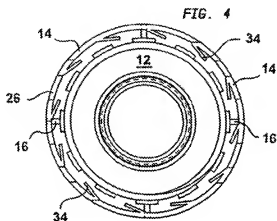
For each of the rejections, Appellant argues that the Examiner has not identified a prior art teaching or suggestion of such “counterclockwise” wings. (Brief 7:15-20). According to Appellant, the Examiner instead points to prior art wings that are disposed at a clockwise angle or parallel to a closure’s axis. (*Id.*) Appellant’s argument is persuasive.

Regarding Kamath’s Figure 1, Appellant states that “the flexible wings 28 [are] connected to the inside surface 26 of the tamper band 24 along lines that are disposed at a clockwise angle with respect to the axis of the closure skirt as viewed from inside the skirt.” (Brief 8:2-8). Kamath’s Figure 1, reproduced below, confirms that the wings 28 are indeed disposed at a clockwise angle, as asserted by Appellant:



Regarding Przytulla’s Figure 4, reproduced below, Appellant states: “The flexible wing elements 34 in Przytulla are connected to the inside surface of the tamper band 14 along lines that are parallel to the axis of the closure skirt as viewed from inside the skirt.” (Emphasis in original) (Brief 9:9-14). In light of Przytulla’s illustrations and written descriptions of the wings 34, we find that Przytulla simply does not disclose the orientation of

connection of the wings 34 to the band 14. Thus, we agree with Appellant's argument insofar that the wings 34 are not disclosed as being tilted counterclockwise, as claimed.



Regarding Ma's Figure 13, Appellant states that "the wedge or ramp elements 226 are at a clockwise angle to the axis of the closure skirt as viewed from inside the skirt." (Brief 11:20-12:2). We find that Ma's Figure 13 does not show the orientation of the connection of the closure's ramp elements 226.

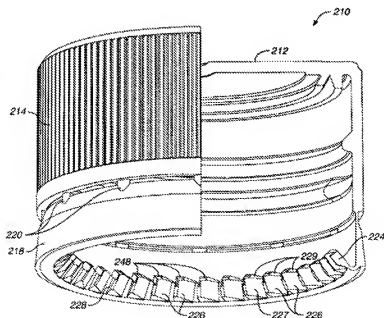


FIG. 13

Ma's Figure 15 however, reproduced below, shows that the closure's ramp elements 226 are parallel to the axis of the closure's skirt. More particularly, Ma's Figure 15 shows the bottle neck upon which the closure is tightened. (Ma 2:52-53). The neck has ramp elements 242 that interlock with the closure's ramp elements 226. (Ma 5:15-34). The neck's ramp elements 242 are shown as being parallel to the axis of the neck. Logically, the closure's ramp elements 226 are correspondingly parallel to the axis of the closure's skirt. Thus, we agree with Appellant's that the closure's ramp elements 226 are not disclosed as having a counterclockwise connection as claimed.

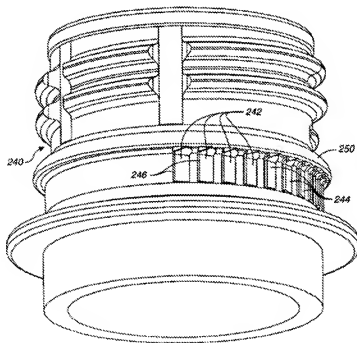


FIG. 15

We note that the Examiner does not dispute that the cited wings of Kamath, Przytulla, and Ma each fail to show a counterclockwise connecting orientation when viewed in the same manner by which

Appellant's wings are described with reference to Appellant's Figure 8. Instead, the Examiner contends that a specific direction of viewing (Ans. 8:5) is not specified by the claims and that each of the prior art wings can therefore be construed as tilting counterclockwise as claimed or at whatever angle desired by simply varying the orientations from which the wings are viewed. (Ans. 7:11-9:9). Such a position improperly ignores clear indication in Appellant's specification that "counterclockwise" means tilting left of vertical when viewed from inside of the closure's skirt and with respect to the closure's orientation.

For the above reasons, we reverse the anticipation rejections of claims 1-7 and 12.

II. § 103(a) Rejections

Claims 5, 6, and 8-11 were rejected under 35 U.S.C. §103(a). Claims 5 and 6 were rejected as obvious over Przytulla; claims 8 and 9 were rejected as obvious over Ma; and claims 10 and 11 were rejected as obvious over Ma and Curry. The Examiner's rationale supporting the obviousness rejections does not cure the deficiency of each of Przytulla and Ma as a base reference regarding the counterclockwise oriented wings as claimed.

Accordingly, the obviousness rejection of claims 5, 6, and 8-11 cannot be sustained.

DECISION

The rejection of claims 1-4 and 6 under 35 U.S.C. § 102(b) as anticipated by Kamath is *reversed*.

The rejection of claims 1, 3-5, and 7 under 35 U.S.C. § 102(b) as anticipated by Przytulla is *reversed*.

The rejection of claims 1, 3-5, and 7 under 35 U.S.C. § 102(b) as anticipated by Ma is *reversed*.

The rejection of claims 5 and 6 under 35 U.S.C. § 103(a) as obvious over Przytulla is *reversed*.

The rejection of claims 8 and 9 under 35 U.S.C. § 103(a) as obvious over Ma is *reversed*.

The rejection of claims 10 and 11 under 35 U.S.C. § 103(a) as obvious over Ma and Curry is *reversed*.

The rejection of claims 2 and 12 under 35 U.S.C. § 102(b) as anticipated by Ma is *reversed*.

REVERSED

KMF